

**BOARD OF APPEALS CASE NO. 5017**

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**BEFORE THE**

**APPLICANTS: Bel Air Realty Associates  
Limited Partnership**

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**ZONING HEARING EXAMINER**

**REQUEST: Interpretation to permit a  
Conventional Open Space Development in  
the R3 District; U.S. Route 1 Bypass  
extension, Hickory Overlook, Bel Air**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 2/16/00 & 2/23/00**

**HEARING DATES: 3/27/00, 6/12/00,  
6/19/00 & 6/26/00**

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**Record: 2/18/00 & 2/25/00**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Bel Air Realty Associates Ltd. Partnership, hereafter "Bel Air Realty," originally filed a request for an interpretation that the subject property is "directly accessible" to Business Route 1. This interpretation would enable the parcel to satisfy the requirements of Section 267-46B(4)(b) of the Harford County Code, which allows development as a Conventional with Open Space (COS) project. In the alternative, the Applicant requested a variance from the requirements of Section 267-46B(4)(b) to allow a Conventional with Open Space (COS) Development in an R3 Urban Residential District. However, at the second night of hearing on the matter, and documented by letter from Applicant's attorney dated June 19, 2000, the Applicant withdrew its request for the variance. Thus, the only issue pending before the Hearing Examiner is the request for an interpretation as set forth above.

The subject property is located in the Third Election District, adjacent to the U.S. Route 1 Bypass extension, on the north side of Hickory Overlook and to the south of the Bypass, which was under construction at the time the application was filed. The parcel is more specifically identified as Parcel No. 488, in Grid 2B, on Tax Map 41. The parcel is approximately 24.74 acres in size, all of which is zoned R3. At the time that the application was filed, the contract purchaser for the subject property was Tri-Star Management, Inc., of Baltimore. However, testimony at the hearing indicated that the contract for purchase of the property was terminated in March of 2000.

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

As a preliminary matter, prior to the start of hearing, the Applicant requested that the Hearing Examiner recuse herself from the case based upon an appearance of bias. People's Counsel, who represented the protestants in the matter, did not join in the request and the request was denied. The hearing went forward and was conducted over three evenings.

The first witness to testify was David A. Carney, 1838 Green Tree Drive, Baltimore. Mr. Carney testified that he is the vice president of the development division for Tri Star Management, Inc., the former contract purchaser for the subject property. Mr. Carney indicated that Tri Star is a development company that specializes in apartment complex projects in the Baltimore area. Mr. Carney indicated that Tri Star had intended to purchase and develop the subject property with apartments at the time the subject application was filed. However, Mr. Carney noted that when Tri Star couldn't get approval from the State Highway Administration (SHA) to provide road access to the property from the Route 1 Bypass, which Tri Star believed was the best access to the property, the contract with the Applicant was terminated. According to Mr. Carney, the State Highway Administration would only permit access to the Route 1 Bypass if Tri Star were to allow a through road which went from the Bypass, through the Hickory Overlook subdivision, through the Bel Air Realty property, all the way to old Route 1. Tri Star wanted a dead end or cul-de-sac road into its apartment complex, and the SHA would not approve of such a plan.

Craig Ward, 5 South Main Street, Bel Air, testified on behalf of the Applicant and was qualified as an expert in civil engineering and land planning. Mr. Ward indicated that he is employed by Frederick Ward Associates of Bel Air as a civil engineer and urban land planner. He stated that he was familiar with Harford County land development practices, including the zoning and subdivision laws and regulations, and that he and his firm have been providing engineering services for the Applicant regarding the subject property since 1987.

Mr. Ward described the subject property as being located directly behind what is now the Bel Air Roller Rink, immediately north of the Hickory Overlook residential subdivision, just south of the Route 1 Bypass currently under construction, and due west of the stream known as the Wysong Branch. He indicated that the property itself contains only 11.8 acres which are developable in the central area of the parcel, with the surrounding 13 acres or so being comprised of wetlands, wetland buffer, floodplain or other environmentally sensitive features.

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

The property totals 24.74 acres. Mr. Ward went on to state that the Applicant does not have the right to access the Route 1 Bypass. He agreed with the testimony of Mr. Carney that the former contract purchaser, Tri Star Management, attempted to get approval for such access from the State Highway Administration and was unable to do so. According to Mr. Ward, the Applicant has also attempted to obtain approval for access to the Bypass, and all such efforts have been unsuccessful. Following this particular testimony, the parties stipulated that the property does not have access to the roadway known as the Route 1 Bypass or Business Route 1.

Mr. Ward further testified that the subject property was zoned to its current R3 designation in a rezoning case which was consolidated with the adjacent property, known as the Hickory Overlook subdivision. According to Mr. Ward, the whole purpose behind the rezoning was to develop the property for multi-family residential housing. It was Mr. Ward's testimony that, at the time of the rezoning, the county was aware that the property did not have any frontage on the Route 1 Bypass, and that the only public access to the property is via Overlook Way, through the Hickory Overlook subdivision, out to the Bypass. According to Mr. Ward, not only was the county aware that this was the only access to the subject property, but that when the Hickory Overlook subdivision was planned and built, the specifications for the roadway known as Overlook Way were built to accommodate access to the subject property and the proposed multi-family housing development which the Applicant desires to construct.

It was Mr. Ward's testimony that Overlook Way is a 36 foot wide paved roadway from curb to curb, within a 60 foot right of way. The roadway extends from the Route 1 Bypass for approximately 1,365 feet to the end of the road, and then there is an additional 300 feet over a platted 60 foot right of way from the end of the road which continues up to the Bel Air Realty property line. Mr. Ward further stated that Overlook Way is classified as a primary residential road. It is Mr. Ward's testimony that once Overlook Way is extended into the Bel Air Realty property, it will make the subject property directly accessible to Business Route 1, which is a collector road. Therefore, according to Mr. Ward, since the subject property will be directly accessible to a collector road, Business Route 1, via Overlook Way, it should meet the requirements for a conventional with open space development as desired by the Applicant.

The conventional with open space development (COS) is more desirable, according to

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

Ward, because it will allow the construction of homes on smaller lots, as well as multi-family housing in an R3 district, whereas conventional development primarily permits only single-family detached homes on lots of a minimum of 7500 square feet. In addition, a COS development allows for more flexibility in terms of project design, to allow accommodation for environmentally sensitive features and planned open space. A COS project calls for a minimum lot size of 5 acres, but it must be directly accessible to a major collector or arterial roadway. Mr. Ward testified that the Bel Air Realty property meets these requirements. However, Mr. Ward indicated that approximately one year prior to hearing, the Department of Planning and Zoning raised the issue of access to the property, and determined that the subject property did not have the “direct” access required for COS development. Mr. Ward did note that there has been no concept plan for COS development of the subject property submitted to the Department, a necessary step in obtaining approval for such a project. In fact, according to Ward, the Department has indicated that if the Hickory Overlook concept plan were modified to include the subject property, then the direct access requirement would be satisfied and a COS development would be permitted on the subject property.

Mr. Ward proceeded to give extensive testimony, referring to numerous exhibits, arguing that three other COS developments have been permitted in the county with the same type of access that would be available to the Bel Air Realty property. Ward noted that the Spenceola development in Forest Hill is accessed via the arterial roadway known as Route 24, but that the townhouse development known as Spenceola Phase II can only access Route 24 via Spenceola Parkway, which is classified as a primary residential road. According to Mr. Ward, Spenceola Parkway is a similar roadway and has similar access to an arterial just like Overlook Way has access to Business Route 1. However, Mr. Ward did note that Phase II of Spenceola was incorporated in the concept plan of the first phase of Spenceola. The other two developments which Mr. Ward testified were similar to the Hickory Overlook development are Deer Spring in Forest Hill and Woodland Run in Abingdon. Mr. Ward indicated that Deer Spring was approved as a COS development, even though it accesses Route 24, an arterial roadway, via Colgate Drive, which is neither a collector nor an arterial roadway. Woodland Run accesses Abingdon Road, a collector, only via Birch Brook Lane, which Mr. Ward testified is a local residential road. Mr. Ward did note that the concept plan for the Woodland Run project was amended to

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

include the Bynum Run Annex, which is the COS development located off of Birch Brook Lane.

Mr. Ward stated that it is possible for the subject property to be developed even without approval as a COS project. The R3 classification and the topography of the land will allow construction of approximately 50 single family detached homes on lots of approximately 7500 square feet in size. However, it is Mr. Ward's opinion that this is not the highest and best use of the property. It is Mr. Ward's claim that the infrastructure that was planned for the property is for multi-family units, and given the proximity of the property to the Bel Air Bypass, multi-family would be the highest and best use. If the project were to receive COS approval, this would allow construction of 120 to 200 units. According to Mr. Ward, the inability to develop the property as a COS project would result in less efficient use of the property with less flexibility to allow for sensitivity to the environmental features. Though not relevant to the interpretation issue, Mr. Ward felt that denial of COS approval would create a negative impact to the property owner because of the owner's intent to develop with multi-family housing.

Upon cross-examination, Mr. Ward testified that his firm was not the engineer for the Hickory Overlook subdivision, so he was not involved with the preparation of the concept plan and approvals for the Hickory Overlook project. He indicated that the process is complicated. The engineer evaluates the property regarding a number of issues, including zoning, soils, environmental restrictions, utilities, etc. If the project is feasible, the next step is preparation of the concept plan, which is submitted to the county for review and approval. The concept plan is a rough plan for the property that identifies primary infrastructure improvements, including open space, proximate location of proposed streets and utilities, a pumping station if needed, density and housing type, etc. The purpose of the plan is to provide the county government with enough information to determine if the property meets the basic zoning requirements and other standards for infrastructure, open space and other necessary features under the Code. If a concept plan for COS development is not submitted, then the project goes forward as a conventional development with the submission of a detailed preliminary plan. When a concept plan is submitted, according to Mr. Ward, the county can make significant changes to a proposal. There can be changes made in the density of housing allowed, the amount of open space, recreation areas location, location of roads, and the like.

Regarding the question of "direct accessibility" to Route 1 via Overlook Way, Mr. Ward

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

did agree that if the Applicant's interpretation of "direct access" is approved, it would be possible for another subdivision north of the subject property to also qualify for COS approval based upon direct access to Route 1 via Overlook Way. However, he indicated that he believed that Planning and Zoning would continually assess whether such roadway connections were appropriate. Mr. Ward also indicated that the Department of Planning and Zoning only reviews concept plans which are formally submitted for approval. The concept plan for Hickory Overlook did not include the Bel Air Realty property. When the engineer submits the plan for concept approval, the Department is only dealing with one project, namely, the project that is under consideration. Mr. Ward conceded that with regard to the subject property and its relationship to the Hickory Overlook project, the Department only had the Hickory Overlook concept plan available to review and approve. The Bel Air Realty property was not included in the concept plan.

The other three developments which were offered as comparative examples of COS developments which were approved even though they were not adjacent to an arterial or collector road and which utilized a local road for access all were part of concept plans subject for review and approval by the Department. While Mr. Ward indicated that he believes Overlook Way was designed for the purpose of allowing access to the Bel Air Realty property (and that its size is designed to accommodate a more dense development), he also noted that Bel Air Realty did not submit a concept plan at the time the Hickory Overlook project was being reviewed, nor have they submitted a concept plan for review and approval to date. He also noted that Overlook Way is constructed to the same width and paving as Whispering Woods Way and Hickory Overlook Drive, both of which serve single-family detached homes in the Hickory Overlook subdivision.

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

Louis DiBitonto, 219 Village of Cross Keys, Baltimore, was next to testify. Mr. DiBitonto indicated that he is an architect, employed by Trout, Segall & Doyle Development, and he is also a partner in Bel Air Realty Associates Limited Partnership, the Applicant in this case. He has one other partner, Richard Pearlstone, however Mr. DiBitonto indicated that he is the partner with the most experience and knowledge of the subject property and the issues regarding this matter. Mr. DiBitonto testified that the partnership purchased the subject property in 1987, and at the time of purchase, the property was zoned ORI and did not have any legal access to any public road. Mr. DiBitonto indicated that he was a partner with the Applicant since the time of purchase of the property, including the time when the property was rezoned to R3. Mr. DiBitonto testified that it was always the Applicant's intention to connect the property through Overlook Way in order to gain road access to the property. The Applicant has entered into an agreement with the owner of the Hickory Overlook property to use Overlook Way for access to the subject property. Mr. DiBitonto further testified that the State Highway Administration would not approve access to the subject property from the Route 1 Bypass. He indicated that it is possible for him to develop the property as a conventional project with single family detached homes, however he did not wish to do this.

Lee Cunningham, 9151 Rumsey Road, Columbia was qualified and testified as an expert in land use and transportation planning and traffic engineering. Mr. Cunningham prepared a traffic analysis for the Hickory Overlook project and the subject property at the time of their rezonings in 1995. He indicated he is familiar with the subject property, the Hickory Overlook subdivision and the roadways involved in this case. It is Mr. Cunningham's opinion that the construction of an extension of Overlook Way in the Hickory Overlook subdivision will make the subject property directly accessible to Route 1. It is his understanding that the provision in the Code requiring direct access to a collector or arterial road for COS developments is to insure safe access for higher density developments to a collector road. Mr. Cunningham indicated that Overlook Way is a primary residential road and that such roads, under the Code, are designed to provide "direct access" between minor residential roads and collectors. He indicated that the design standards for primary residential roads are the same or similar to the design standards for collector roads. He did not believe that the Bel Air Realty property would have to be part of the Hickory Overlook project in order for Overlook Way to provide the direct

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

access required under the COS development standards. He is not aware of any reason why a primary residential road could not serve to provide direct access to a collector road for more than one subdivision. He indicated that he is not aware of anything in the Code which would require a COS development to abut an arterial road or to have frontage on an arterial road. Nor is he aware of any provision in the Code that would prevent access from going through a subdivision to get to a collector. He concurred with Mr. Ward that he believed that the proposed access to the subject property is the same or similar to the access provided to the Spenceola, Deer Spring and Woodland Run projects. Mr. Cunningham offered much testimony relating to traffic counts for 50 single-family homes as compared to 200 multi-family units and the impacts of same, but these were offered with regard to the Applicant's request for a variance, which was subsequently withdrawn. Mr. Cunningham did note that it is the policy of Harford County to review COS developments through a concept plan review process, though he did not know if it was the practice of the county to require all owners of involved properties to sign off on the concept plan review process. He also noted that it is usually the case that the original submitter of the concept plan is the party that submits an amended plan or a request for the same. At the conclusion of the protestants' case, Mr. Cunningham was called in rebuttal to testify that, in his opinion, Overlook Way should more appropriately be designated a collector road. He believes that it does not provide access to abutting properties as its primary function, as in the case of a local road, nor does it fit the definition of an arterial road. Accordingly, it remained Mr. Cunningham's opinion that the subject property has direct access to a collector road, and therefore meets the requirements for a COS development.

Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, testified on behalf of the Department and summarized the Department's Staff Report, which has recommended denial of the Applicant's request for a variance and denial of Applicant's request for an interpretation that the subject property has "direct access" to a collector or arterial road. Mr. McClune first explained that, in order for a project to proceed as a Conventional with Open Space (COS) development, which will allow for a higher density of residential housing units, the Code requires that the project must be directly accessible from one or more collector or arterial roads. According to Mr. McClune, Overlook Way is not identified as an arterial or a collector road in the County's transportation plan, and in fact, it

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

was designed and approved as a local road. A local road collects and distributes traffic among subdivisions and may include roads which are identified as primary residential roads or minor residential roads, as well as business and industrial roads. Mr. McClune testified that Overlook Way is a primary residential road.

With regard to making a determination as to whether a proposed COS development meets the requirements of the Code, Mr. McClune stated that is important to look at the definition of “project,” since the Code provides that the “project” must be directly accessible to an arterial or collector road. According to Mr. McClune, Hickory Overlook was a COS project, reviewed as part of the Concept Plan review process. In the plan, the Department looks at open space, housing types, and roadways within the project, among other things. In this case, Mr. McClune noted, Hickory Overlook was the “project” which had direct access to an arterial or collector road, namely the Route 1 Bypass. Bel Air Realty is a second project which only has access is to a primary residential road, Overlook Way, not to a collector or arterial road. All of the traffic from Bel Air Realty’s property would have to pass through an existing residential community in order to access a collector road. According to Mr. McClune, if direct access is interpreted as suggested by the Applicant, any project with access to a local road could be developed as a COS project, contrary to the language of the Zoning Code.

It was Mr. McClune’s testimony that the Department’s understanding of the purpose of the requirement for COS projects to have direct access to an arterial or collector road was to be sure that higher density projects, which have more flexibility in housing types, would be able to immediately access a collector or arterial road and not have such projects developed with access through existing established communities. Mr. McClune pointed to amended legislation by the County Council on another issue in support of the Department’s position. The Zoning Code contains provisions for the development of Continuing Care Retirement Centers, which are also required to have direct access to certain types of roads. When a particular CCRC was proposed which did not have direct or immediate access to an arterial or collector road, but rather to a primary residential road, the Council amended the Code to include access to a primary residential road as part of the requirements. Mr. McClune indicated that if the Applicant’s position were correct, then the Council would not have had to amend the language relating to the CCRC’s in order to allow for development of such projects

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

on primary residential roads. The Department's position is that, in order for a "project" to have direct accessibility as required by the Code for a COS development, that accessibility must be immediate and not through another existing project or subdivision. Because the Bel Air Realty property or project was not and has not been included in the Hickory Overlook Concept Plan for a COS development, subject to review and approval by the Department, it is not now directly accessible to a collector road, namely the Route 1 Bypass. Accordingly the Department has recommended that the Applicant's request for an interpretation granting direct access be denied, and that the Department's interpretation be upheld.

Upon cross examination, Mr. McClune testified that Hickory Overlook Drive, one of the access points to the Hickory Overlook subdivision, is a local road, and that at least part of the road meets the definition of a primary residential road. Mr. McClune indicated that when the Department reviewed the concept plan for the Hickory Overlook subdivision, which they viewed as a single project, it had to be directly accessible to Business Route 1 in order to obtain approval as a COS development. Upon review, it was determined that the project was immediately and directly accessible to Business Route 1 and thus the appropriate infrastructure for a COS development was built into the project. The "access" which was reviewed had nothing to do with access to each individual lot. Rather, the Department looks at the project as a whole with regard to the "accessibility". The Department determined that the Bel Air Realty project would have to travel through or pass through the existing Hickory Overlook project, and therefore it doesn't meet the test for direct accessibility and does not meet the criteria for COS approval.

Mr. McClune went on to discuss the differences between the Spenceola, Deer Spring, and Woodland Run projects and the Bel Air Realty proposal. With regard to Spenceola, it was Mr. McClune's testimony that direct access for that project was needed to Route 24. Phase I was approved with direct access, but then the developer amended the Concept Plan to include a Phase II, which was farther back from Route 24, behind Phase I. The amended Concept Plan was then reviewed, open space was recalculated, as was density and land use distribution, so that Phase II was incorporated into the whole project. The Department then reviewed Phase I and Phase II together as one project, looking at the number of access points for the project as a whole. The whole project was determined to be directly accessible to Route 24. The Deer

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

Spring project, according to Mr. McClune, was also reviewed as one project which was part of the Klein development project. There was one section, zoned B-2, which was not considered part of the project, but this is because COS developments are not permitted in a B2 zone, and therefore there was no concept plan which was required to be amended when the Deer Spring residential project was proposed. Finally, regarding the Woodland Run project, the original concept plan was approved for COS development. When the Bynum Run Annex was proposed, it was added to the concept plan for the entire project.

According to Mr. McClune, during his twelve years with the Department of Planning and Zoning, several dozen COS developments have been approved and all have been subject to COS/Concept Plan review. He personally has reviewed all COS projects since 1990. It is his opinion that no proposed COS projects have been treated or reviewed any differently than this subject project and it is his opinion that the definition of “directly accessible” has been applied uniformly to all cases. It is common for a concept plan to go through revisions or amendments, and each concept plan must be reviewed anew when it is amended. According to Mr. McClune, if the subject property had been included in the concept plan for the Hickory Overlook project, it would have been reviewed as a whole and the standards for COS developments would have been applied to the project as a whole. Bel Air Realty has never submitted a concept plan.

Mr. McClune went on to testify that roadways the width of Overlook Way do exist in conventional subdivisions. It is the Department’s policy to review a proposed road with regard to how much traffic will go over it, how many other intersections exist, how many lots need access, and whether there will be on street parking, to name a few of the features considered. 36 foot wide roads have been approved which do not access COS developments, so the fact that Overlook Way is 36 feet wide is not the definitive factor in the Department’s decision to either approve or deny COS approval for the subject property. According to Mr. McClune, if the Applicant’s interpretation is found to be correct, COS developments could be stacked one after the other, which in this case could extend Overlook Way through the Bel Air Realty property to adjacent properties without limit. This would not result in good land use practices, according to Mr. McClune. It was his opinion that such a scenario would not contribute to the orderly growth of the community. It was Mr. McClune’s testimony that, in most cases, higher

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

density projects should be developed so there is a road network to get them out to major roads without having to pass through lower density developments. However, he did note that there are some subdivisions in which higher density developments have been located to the back of single family detached developments so that the single family residents don't have to drive through the higher density, higher trafficked area.

Ten residents of the Hickory Overlook subdivision appeared and testified in opposition to the Applicant's request for an interpretation and/or a variance. Their testimony all went to the issues of safety and traffic, particularly noting that the Hickory Overlook subdivision has a large percentage of young and school age children who play in the streets and utilize the tot lot play area which was constructed on Overlook Way. They each felt that it would be dangerous and inappropriate for traffic from a 200 unit housing development to be added to the existing traffic within the subdivision. Concerns were also expressed regarding traffic backing up onto Overlook Way, trying to exit out onto Route 1. Finally, the protestants each testified that, at the time that they purchased their homes, no one ever informed them that a multi-family housing development was being planned for the subject property. It should be noted that much of the testimony offered at hearing, both by witnesses for the Applicant and by the protestants, was directed to issues which would have been relevant to Applicant's initial request for a variance, including issues of practical difficulty and hardship to the Applicant and those relating to negative impact and detrimental effect on the protestants. Once the variance request was withdrawn, the testimony with regard to these issues was no longer relevant to the matter at hand.

**CONCLUSION:**

The Applicant is requesting an interpretation that the subject property has what should be determined to be “direct” access to a collector road (that roadway being either the Route 1 Bypass or Overlook Way) and, therefore, that the property meets the requirements of Section 267-46B(4)(b) of the Harford County Code to qualify for development as a Conventional with Open Space project.

Section 267-46 of the Code sets forth the requirements which must be met in order for a project to qualify as a “conventional development with open space (COS)” or as a planned residential development. Specifically, Section 267-46B(4)(b) states:

- (4) Vehicular circulation and access.
  - (a) The project roads shall be designed to provide a logical road network adequate for internal movement.
  - (b) The project must be directly accessible from one (1) or more existing or planned arterial or collector roads.

In addition, Section 267-4 of the Code sets forth the definition of “Access” as: “An unobstructed way or means of approach to provide entry to or exit from a property.” While there is no definition of the word “direct” or the words “direct access” in the Code, Webster’s New World Dictionary of the American Language, Second College Edition, William Collins & World Publishing Co, Inc., 1976, defines “direct” as:

- ...1. By the shortest way, without turning or stopping; not roundabout; not interrupted; straight... 2. Honest and to the point; straightforward; frank... 3. With nothing or no one between; immediate; close, firsthand, or personal...”. [Emphasis added]

Based upon the extensive testimony and exhibits admitted at hearing, the Hearing Examiner makes the following findings of fact:

1. There is no dispute, and it was established, that Business Route 1, also referred to as the Route 1 Bypass or the Bypass Extension in the vicinity of the subject property, is a collector road pursuant to the laws and regulations of Harford County.

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

- 2. Overlook Way, in the Hickory Overlook subdivision, is designated and functions as a primary residential road, a local road, under county regulations and as set forth in the county transportation plan. Although there was expert opinion testimony offered in rebuttal by the Applicant that Overlook Way is a collector road, this same expert testified upon direct examination that Overlook Way was a primary residential road and met the Code definition for such a roadway. The Application filed by Bel Air Realty specifically requests an interpretation that the subject property is directly accessible to Business Route 1 in order to meet the COS development standards. Clearly the Applicant determined that the collector road to which direct access would be necessary was Business Route 1, and not Overlook Way. Even if an argument can be made that Overlook Way is a collector road, and not a primary residential road, the actual designation of the roadway under the county's plan as a primary residential or local road appears to comply with the definition, there is no evidence of fraud or wrongdoing with regard to the designation of the roadway, and the Department of Planning and Zoning's reliance upon such designation is reasonable and appropriate. One opinion that the roadway should be classified differently does not outweigh the factual evidence to the contrary.**
- 3. The State Highway Administration has denied the Applicant access to Business Route 1 (i.e. the Route 1 Bypass), which is the only collector or arterial roadway currently in the immediate vicinity of the subject property.**
- 4. The subject property is only accessible to Business Route 1/Route 1 Bypass via Overlook Way, through the Hickory Overlook subdivision.**
- 5. The Hickory Overlook project was planned, reviewed, approved and constructed as a Conventional with Open Space (COS) development, having submitted concept plans for such a development to the Department of Planning and Zoning for review and approval. The Hickory Overlook project, as submitted to the Department of Planning and Zoning in its concept plans, did not include any plans or proposals for the subject property. The Hickory Overlook project has not submitted an amended concept plan to include the subject property.**

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

6. Neither the Applicant nor any other party has ever submitted a concept plan for development of the subject property as a COS project.

The facts as set forth above, taken together with the language of the COS provisions, would appear to be definitive in demonstrating that the subject property does not have “direct” access to Business Route 1. The Applicant, however, has made a creative argument that the language of the COS statute may be ambiguous, that “direct” means only “unobstructed” or straight and that Overlook Way provides direct access from the subject property to Route 1 and should therefore meet the COS requirements. However, this argument flies in the face of reason and logic, and fails to take into account the COS statute as a whole.

Section 267-46 of the Harford County Code, in its entirety, provides:

“Conventional development with open space (COS) and planned residential development (PRD).

- A. Eligibility. A COS shall have a minimum parcel size of fifteen (15), ten (10), five (5) and five (5) acres in the R1, R2, R3 and R4 Districts, respectively.
- B. Development standards.
  - (1) Permitted uses. The uses permitted in a conventional development with open space and planned residential development shall be those uses permitted in the appropriate district. Business uses in a planned residential development project developed in the R4 District are permitted, provided that such uses do not exceed one thousand (1,000) square feet of gross floor area for every one hundred (100) dwelling units.
  - (2) Density. Allowable densities are set forth in Section 267-36C(2)(e). [Amended by Bill No. 96-60]
  - (3) Site design.
    - (a) The project shall be designed with regard to the soils, topography and natural features of the parcel.
    - (b) All residential structures shall be sited so as to promote privacy and ensure natural light for all living areas.

**Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

(c) Permitted variations in yard setbacks are set forth in § 267-23, Yards.

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

- (d) Buildings near the periphery of the project shall be harmonious with neighboring areas and shall provide adequate transition in density and type or shall provide a buffer yard as required in § 267-28C, Buffer yard requirements.
  - (e) No building shall be located within ten (10) feet of the road right-of-way, parking areas and project open space.
  - (f) Business uses in a planned residential development project developed in the R4 District shall be designed with their primary orientation to the project either as integrated with the attached dwelling units, consistent with the needs of the future residents or as an integrated community shopping center in § 267-48. Business uses shall occur within completely enclosed buildings. No freestanding signs advertising business uses shall be permitted.
- (4) Vehicular circulation and access.
- (a) The project roads shall be designed to provide a logical road network adequate for internal movement.
  - (b) The project must be directly accessible from one (1) or more existing or planned arterial or collector roads.
- (5) Open space. The open space shall be generally continuous, accessible to the residents and protective of natural features. In order to qualify for the density increase provided in the conventional development with open space and planned residential development, the following open space requirements shall be met:
- (a) In a conventional development with open space, open space shall be provided as follows:

District	Minimum Open Space (percent of parcel area)
R1	10%

**Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

R2	10%
R3 (single-family attached & detached)	15%
R3 (all other dwelling types)	20%
R4	20%

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

- (b) In a planned residential development, open space shall be provided as follows:

District	Minimum Open Space (percent of parcel area)
R3	20%
R4 (except high-rise)	25%
R4 (high rise)	30%

- (6) Recreational facilities. Adequate recreational facilities shall be provided in each phase of development to meet the needs of the residents.

- C. Increase number of apartments. The permitted number of apartment dwellings may be increased on a sliding scale based upon the difference between nine hundred (900) square feet and the average dwelling unit size proposed, divided by nine hundred (900) square feet per dwelling unit. The resulting fraction shall be converted into the percentage increase allowed. Such permitted increase in apartment units shall not be considered in computing gross density.”

As Mr. McClune testified rather extensively, the Department of Planning and Zoning reviews the concept plans for a COS development project with regard to many different factors, taking the entire project together as a whole. In accord with the statute, the Department determines whether open space requirements are met, whether there are sufficient recreational facilities to meet the needs of residents, whether the roadways are designed to function adequately, all factors which much be considered to determine whether the plan meets the definition and purpose of a conventional development with open space. Mr. McClune noted, in accord with the dictionary (and common sense) meaning of “direct”, that the Department also looks to see if the project, taken as a whole, has direct, (i.e. “immediate”, “the shortest way”, “with nothing or no one between”) access to a collector or arterial roadway. The facts here are clear, the subject property does not have such direct access. In fact, the State Highway Administration denied the property direct access to Business Route 1. The Hickory Overlook subdivision is between the subject property and Business Route 1. The subject property is not part of the Hickory Overlook project and therefore, the subject property cannot be considered to be directly accessible to Business Route 1.

## **Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

If the subject property was considered as part of the Hickory Overlook project for COS review and approval, the Department of Planning and Zoning would have had to consider open space, roadways, recreational facilities and other requirements not only for the residents of Hickory Overlook, but for the residents of the Bel Air Realty property added as well. This would likely have led to a different configuration of open space, recreation, and other relevant COS factors than the configuration which has already been put into place within the existing Hickory Overlook project. The Applicant seeks to have us consider the words “direct access” contained within the definition of “primary residential roadway” to be conclusive of actual “direct access”, for purposes of COS approval. This argument ignores the purpose and function of the COS statute itself, the long-standing practice of the Department of Planning and Zoning, and a common sense understanding of the circumstances and factors relating to a COS project taken as a whole. Such an approach would not lead to sound decision-making. As the Maryland Courts have stated:

“A statute is not made unclear or ambiguous because one side in a controversy, in order to obtain a desired result, gives its words a meaning they do not on their face appear to have. If the words of a statute, given their normal meaning, are plain and sensible the legislature will be presumed to have meant the meaning the words import.” Hunt v Montgomery County, 248 MD. 403, 237 A.2d 35 (1968).

Further, as set forth in Mayor of Baltimore v. Bruce, 46 Md. App. 704, 420 A.2d 1272 (1980), a word taken out of a statute cannot be given a meaning standing apart from the statute itself:

“The rule of statutory construction is clear that in ascertaining the intention of a legislative body all parts of a statute must be read together and all parts are to be reconciled and harmonized if possible. All parts of the statute must be read together so that no part becomes superfluous.” {Citations omitted}

If any project, connected by a local road to another project, could qualify for COS development based upon the other project’s accessibility to a connector or arterial roadway, it would render the requirement of “direct” accessibility in Section 267-46 superfluous.

**Case No. 5017 - Bel Air Realty Associates Ltd. Partnership**

It should be noted that denial of “direct access” under the COS statute will not deprive the Applicant of the ability to develop the subject property. Road access to the property remains available via Overlook Way for conventional development of single-family homes or other types of development allowed in the R3 zoning category.

Therefore, based upon the findings of fact and law as set forth above, it is the interpretation of the Hearing Examiner that the subject property does not have the “direct” access to Business Route 1/Route 1 Bypass which would be required to meet the standards for a COS development under the Harford County Code.

Date    SEPTEMBER 21, 2000

Valerie H. Twanmoh  
Zoning Hearing Examiner